

ORDINANCE NO. 2020-09

**AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE
CHAPTER 3 TO PROMOTE TEMPORARY USES AS TOBACCO AND NICOTINE FREE**

WHEREAS, the City of Brevard Planning Board and Planning Department Staff have recommended that Brevard City Code, Unified Development Ordinance, Chapter 3, be amended to ask temporary use applicants to promote events as tobacco and nicotine free; and,

WHEREAS, the City Council of the City of Brevard finds that the proposed amendment is consistent with the City of Brevard Comprehensive Plan, specifically the following sections:

ELEMENT 4: LIVABLE COMMUNITIES

OBJECTIVE 4.4: Enhanced connections, relationships, and collaborations between the City and its citizens and community organizations.

POLICY 4.4.B: Foster institutional relationships by reaching out to civic organizations and identifying opportunities for collaboration.

POLICY 4.4.C: Promote a politically empowered and engaged community by educating citizens regarding the mission, objectives, and capacities of the City of Brevard.

and,

WHEREAS, a legislative public hearing was conducted on Monday, February 15, 2021, by Brevard City Council, and, after hearing all persons wishing to comment, and upon review and consideration of the proposed amendments, it is the desire of the City Council of the City of Brevard that Brevard City Code, Unified Development Ordinance be amended as outlined below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:


SECTION 01. Brevard City Code, Unified Development Ordinance, Chapter 3 is hereby amended as depicted in Exhibit A, which is attached hereto and incorporated herein by reference.

SECTION 02. As to any conflict between this Ordinance and any parts of existing ordinances, the provisions of this Ordinance shall control.

SECTION 03. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.


SECTION 04. This Ordinance shall be in full force and in effect from and after the date of its adoption and approval.

Adopted and approved upon first reading this the 22nd day of February, 2021.



Jimmy Harris
Mayor

ATTEST:



Jill Murray

Jill Murray, CMC
City Clerk

APPROVED AS TO FORM:



Michael K. Pratt

Michael K. Pratt
City Attorney

3.23. - Temporary uses permitted with standards.

A. General requirements.

1. Temporary uses, structures and special events shall be established for operation only after the issuance of a temporary use or special event permit and a city privilege license, the fees for which shall be set forth in the Schedule of Taxes, Fees and Charges of the annually adopted Budget Ordinance for the City of Brevard, as authorized by G.S. 160D-402(d).
2. In the consideration of any temporary use, structure or special event, the administrator shall have broad discretion to impose such conditions as may be necessary to protect the health, safety and welfare of the public.
3. In addition to the specific temporary uses and structures listed below, the administrator may, at his or her discretion, issue a permit for other temporary use provided that:
 - a. The use is clearly of a temporary nature;
 - b. The use is limited to a period not to exceed 90 days except as otherwise provided; and
 - c. The use is in keeping with the requirements and is consistent with the spirit and intent of the district in which it is proposed, and of this ordinance.
4. In addition to the standards contained in the following sections, applicants for operation of a temporary use, structure or special event shall demonstrate compliance with each of the following requirements:
 - a. The use shall clearly be of a temporary nature.
 - b. The use shall not obstruct any public travel way except by specific approval by the city and will cause no traffic congestion;
 - c. The use shall not create a nuisance to surrounding uses.
 - d. The use shall not create hazards or adverse impacts related to parking, drainage, fire protection, or other adverse impacts.
 - e. The operator shall provide a plan for the management of waste generated by the use, and sanitary facilities if the administrator or health department deems it is necessary.
 - f. The operator shall satisfy all other requirements of the director of public health, the building inspector or the fire marshal.
 - g. The operator shall secure a business license, street closure permit, sidewalk closure permit, or parade permit if required.
 - h. The applicant and/ or operator shall promote the temporary use or special event as tobacco and nicotine free (including, but not limited to smoking, vaping, dipping, and chewing).
 - i. Parking:
 - i. A minimum of five parking spaces shall be designated for use by patrons of the temporary use, structure or special event. In all cases, the applicant shall demonstrate that there will be adequate parking for the existing uses as well as the temporary use, structure or special event.
 - ii. Temporary use, structures, and special event may be permitted within developed parking lots that serve a principal structure(s), the hours of operation of which are the same as the use, structure or event, only when the number of existing parking spaces exceeds the minimum number of spaces that are required for the principal structure(s) by a minimum of five parking spaces, plus the number of parking spaces to be rendered unusable within the area of the use, structure, or event.
 - j. Area. The total area of a temporary use or special event, including tents, display areas, and other appurtenances of the use, shall not exceed 2,000 square feet. This requirement shall not apply to the following categories of temporary uses or special events:
 - i. Special events, upon approval by the administrator.
 - ii. Farmers markets.
 - iii. Carnivals and circuses.
 - iv. Religious meetings.
 - v. Temporary vendors on undeveloped, vacant lots.
 - vi. Temporary vendors on developed properties containing principal structures, where the hours of operation of the principal structure does not conflict or overlap with the hours of operation of the temporary use, and when the property is wholly owned or leased by the operator of the temporary use.
 - k. Tents and structures:
 - i. Applicants shall provide flame retardancy certifications for all tents.

- ii. Temporary structures shall not exceed 120 square feet. Tents, shipping containers, satellite offices and classrooms, and equipment sheds shall not be subject to this requirement.
 - iii. Seasonal greenhouses, tents, and other temporary structures may be permitted for a period not to exceed 90 days. These structures must be removed on the expiration date of the permit.
 - iv. A satellite office and equipment shed may be permitted in any district for a period covering the construction phase of a project, not to exceed one year, provided that such office be placed on the property on which the project is situated.
 - v. The administrator may approve the temporary set-up and occupancy of recreational vehicles (or other temporary dwellings in consultation with the building inspector) when the principal residence of the occupant has been destroyed by wind, fire, movement of earth, or other manmade or natural disaster, and subsequent to such event having been declared a disaster by the Mayor of the City of Brevard, the County Manager of the County of Transylvania, the Governor of the State of North Carolina, or the President of the United States. In no case shall such a vehicle or temporary dwelling be set up or occupied for a period exceeding 180 days. The setup or occupancy of a recreational vehicle shall not be permitted within the City of Brevard for any other reason whatsoever, except as otherwise provided for in this ordinance.
 - vi. Shipping containers shall only be permitted to be used for storage and must be in conjunction with a non-residential use.
- I. Site layout:
- i. Temporary uses, structures and special events shall be arranged so as to maximize public safety, to minimize conflicts among vehicles and pedestrians, to minimize conflicts with existing, permanent uses.
 - ii. Temporary uses, structures and special events shall be situated at least ten feet from all property lines and any road right-of-way, shall not encroach onto any street, sidewalk, or travel way, and shall not obstruct any loading zone or handicapped parking space. This requirement shall not apply to special events approved by the city for placement upon public streets.
 - iii. Temporary uses, structures and events may obstruct travel ways within parking lots only upon determination by the administrator that such obstruction will not impede commerce, hinder the flow of traffic or endanger the safety of motorists or pedestrians. Uses, structures or events shall be clearly delineated and separated from areas of active vehicle operation by means of traffic safety cones, signage, flagging, or other approved means.
 - iv. Temporary uses, structures and special events shall be situated at least ten feet from points of ingress and egress, and shall not obstruct the sight triangle at any intersection. Ingresses and egresses to the temporary uses, structures and special events shall be designated.
- m. The administrator shall require an operations and site plan for each temporary use, structure, or special event, and shall require written permission for the operation of the temporary use, structure or special event by the owner(s) of the subject property.
 - n. The administrator may require that the operator provide a performance bond in the amount of 125 percent of the cost of removal of the use and restoration of the site, as authorized by G.S. 160D-702.
 - o. The temporary use, structure or special event shall comply with all other applicable provisions of City Code.